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13 Attorneys for Plaintiff
 14 EUEL ALLEN

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 EUEL ALLEN

18 Plaintiff,

19 Case No: C09-02507 SC

20 vs.

21 OPPOSITION TO REQUEST
 22 FOR TAKING JUDICIAL
 23 NOTICE OF CHERRY PICKED
 24 DOCUMENTS IN 12(b) (6)
 25 MOTION

26 UNITED FINANCIAL MORTGAGE
 27 CORP., ALLIANCE BANCORP,
 28 MORTGAGE ELECTRONIC
 REGISTRATION SYSTEMS, INC.,
 CALIFORNIA RECONVEYANCE
 CO.; GMAC MORTGAGE;
 JP MORGAN CHASE BANK
 AND DOES 1-25, INCLUSIVE,

DATE: SEPT 11 2009
 TIME: 10:00 A.M.
 COURT: 1 (17TH FLOOR)

Defendants

Plaintiff, Euel Allen, responds to the Request
 For Judicial Notice as follows:

1. Plaintiff has no objection to consideration
 of the documents referenced by defendant under the title
 "Trust Transfer Deed". However, plaintiff observes that

1 defendant has actually attached documents with three
2 titles under this paragraph. These documents are: [A]
3 Revocable Intervivos Trust of Thomas Johnson Jr. signed
4 2-4-02 by Thomas Johnson Jr. and Euel Allen. It is
5 unclear whether this document was signed February 4, 2002
6 or on the second day of April, 2002. [B] On September 16,
7 2003 Euel Allen signed a Declaration of Death of Settlor;
8 and [C] On December 5, 2003 a document titled "Trust
9 Transfer Deed was recorded. It is the position of
10 plaintiff that all three documents should be considered
11 for only two limited purposes: That Euel Allen initially
12 acquired an interest in the property in 2002 and that
13 Euel Allen now owns the subject property free and clear
14 of any trust as his sole and separate property. These
15 documents are referred to in paragraph one of the
16 Complaint. These documents support the claim of
17 plaintiff as summarized in paragraph one of the
18 Complaint.

19 2. Plaintiff objects to taking judicial notice
20 of the document titled "Grant Deed--Name Change Only".
21 This document is not referred to in the Complaint.
22 Extrinsic evidence will be required to explain why
23 plaintiff prepared and recorded this document. The mere
24 existence of this deed proves nothing since Mr. Allen
25 already owned the property. Ambiguities in the title, if
26 any, as reflected in possible conflicts between the
27 documents in paragraph 1 and paragraph 2 should be
28 resolved in favor of plaintiff [Hearn v. RJ Reynolds

1 (D.AZ 2003) 279 Fed Supp 2d 1096].

2
3 3. The Deed of Trust attached is incomplete and
4 plaintiff objects to its consideration by the Court. In
5 particular, the "Balloon Rider" referenced in the
6 document was not attached. Also, the copy attached does
7 NOT have the document stamp from the Alameda County
8 Recorder. Moreover, the required identification of the
9 person requesting recording is missing, and the place for
10 sending the notices of property taxes is also missing.
11 In summary, this is NOT an accurate copy of the actual
12 deed of trust referenced in the Complaint.

13 Documents not physically attached to the
14 complaint may be considered as part of a FRCP 12(b)(6)
15 motion only if the following requirements are met: [A]
16 The complaint refers to the document; [B] The document is
17 central to the claims of plaintiff; and [C] The
18 authenticity of the copy attached to the motion is not
19 questioned [Branch v. Tunnell (9th Cir 1994) 14 Fed 3d
20 449, 454, overruled on other grounds in Galbraith v
21 County of Santa Clara (9th Cir 2002) 307 Fed 3d 1119,
22 1127; Bryant v Avado Brands (11th Cir 1999) 187 Fed 3d
23 1271].

24 4. Notice of Default, Assignment of Deed of
25 Trust and Substitution of Trustee: Plaintiff objects to
26 consideration of these documents since they are clearly
27 incomplete. There is no copy of the stamp of the Alameda
28 County Recorder. Thus, plaintiff has no way to know
whether these documents were actually recorded, or if

1 they were ever served on plaintiff. Plaintiff is
2 questioning the authenticity of each of these documents
3 attached as requests numbered 4, 5, 6, and 7.
4

5 Matters of public record may be considered only
6 if they are not subject to reasonable dispute [Intri-Plex
7 Technologies v Crest Group Inc (9th Cir 2007) 499 Fed 3d
8 1048, 1052]. In this case, there is a reasonable dispute
9 regarding the authenticity of the attached documents.
10 Also, the documents are being used to support
11 affirmative defenses rather than to contradict any
12 allegation in the complaint. Ordinarily, a FRCP 12(b)(6)
13 motion cannot be used for this purpose [Xechem Inc v
14 Bristol Meyers Squibb Co (7th Cir 2004) 372 Fed 3d
15 899, 901]. For each of these reasons, the documents
16 should not be considered.

17 5. Purchase and Assumption Agreement: We object
18 to this document since it is clearly incomplete. In
19 particular, page 34 through 37 identify the liabilities
20 not assumed. These pages are missing. Also, this
21 document is not referenced in the complaint and is not
22 critical to the complaint. Moreover, there is no
23 assurance that the Henderson Nevada subsidiary of
24 Washington Mutual is the same company that acquired the
25 loan at issue in this lawsuit.

26 This document is offered to support an
27 affirmative defense that movants can legally buy the
28 assets of their predecessor in interest, with a discharge
of all the debts. We concede bankruptcy courts may have

1 this power. However, it is not clear that private
2 parties may reach this result by contract [Cf: Uniform
3 Fraudulent Conveyances Act, codified as California Civil
4 Code §3434 et seq].

5 For the reasons set forth, plaintiff prays that
6 the Court deny the Request for Judicial Notice of all the
7 proffered documents except the Revocable Intervivos
8 Trust, Declaration of Death of Settlor, and Trust
9 Transfer Deed referenced in paragraph 1.

10 DATED: July 21, 2009.

MOSS & MURPHY

11
12 By 

Glen L. Moss

13 x/allen.obj
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